

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JAMES PATTON,

03-CV-1722-BR

Plaintiff,

OPINION AND ORDER

v.

TARGET CORPORATION,

Defendant.

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BROWN, Judge.

This matter comes before the Court on Intervenor State of Oregon's Motion for Relief from Judgment of Dismissal (#114). The State seeks relief from the Court's Opinion and Order issued February 8, 2008, in which the Court approved the Joint Motion to Approve Form of Judgment submitted by Plaintiff and Defendant and dismissed this matter pursuant to a settlement agreement over the State's objection. Because the State requests this Court to reconsider its decision pursuant to Federal Rule of Civil Procedure 60(b) on the basis of a purported change in controlling law, the Court construes the State's Motion as a Motion for Reconsideration.

For the reasons that follow, the Court **GRANTS** Intervenor State of Oregon's Motion to the extent that the State requests the Court to reconsider its decision, and, having reconsidered the merits of the State's arguments, the Court **DENIES** the State's Motion for Relief from Judgment of Dismissal (#114).

BACKGROUND

Plaintiff James Patton filed a Complaint against Defendant Target Corporation on December 11, 2003, alleging, *inter alia*, a common-law wrongful-discharge claim. On June 12, 2007, this Court held a four-day jury trial. On June 15, 2007, the jury rendered a Verdict in favor of Plaintiff against Defendant, which included a punitive-damages award of \$900,000 in favor of Plaintiff on his wrongful-discharge claim. On June 18, 2007, the Court entered the Verdict. At the time, the parties anticipated extensive post-verdict motion practice concerning the viability of the punitive-damages award.

On August 30, 2007, before any post-trial motions were filed or a judgment on the Verdict was entered, Plaintiff and Defendant filed their Joint Motion to Approve Form of Judgment to dismiss the matter pursuant to a settlement agreement. On September 4, 2007, the State of Oregon filed its Motion to Intervene in order to object to the Stipulated Final Judgment on the ground that the settlement agreement was reached without regard to the State's status as a "judgment creditor" of a share of the punitive-damages award under Oregon Revised Statute § 31.735.¹ On October 9, 2007, the Court granted the State's Motion to Intervene as a matter of right pursuant to Federal Rule of Civil Procedure 24(a) on the ground that the State of Oregon had

¹ Oregon Revised Statute § 31.735 was formerly § 18.540.

demonstrated it has a significantly protectable statutory interest under the liberal rules governing intervention in federal court. See *United States v. Alisal Water Corp.*, 370 F.3d 915, 918-19 (9th Cir. 2004). In its Opinion and Order, however, the Court did not reach the question of the scope of the State's statutory interest in the punitive-damages award before entry of judgment.

On October 17, 2007, the State filed its Complaint in Intervention seeking to protect its asserted interest in the punitive-damages award. In its Complaint, the State requested the Court to reject the Stipulated Final Judgment because it would hinder the State's ability to protect its interest in a portion of that punitive-damages award. On October 29, 2007, the Court heard oral argument on the parties' Motion for Judgment to Approve Form of Stipulated Judgment and the State's objections. The Court permitted the Plaintiff, Defendant, and the State to brief the limited issue of the nature of the State's interest in the procedural void between the entry of a verdict that includes a punitive-damages award and the entry of a judgment that includes such an award. The Court took the Motion under advisement on December 7, 2007.

On February 8, 2008, the Court issued an Opinion and Order approving the Stipulated Final Judgment submitted by Plaintiff and Defendant and dismissed the matter with prejudice. The Court

held:

[T]he State does not have any vested or enforceable property interest in a punitive-damages award until a final judgment is entered awarding such damages because the State's expectation of a share of such an award up to that point, as with the expectation of the plaintiff as to his share, is dependent upon the entry of judgment.

If the Oregon Legislature intended § 31.735 to protect the State from a risk that litigants might "circumvent" the State's rights under the statute by settling their case in the procedural void between the entry of a verdict that includes an award of punitive damages and entry of judgment including such an award, the statute as written does not accomplish that goal. Even if this was the legislative intent, this Court cannot merely re-write the statute.

Opin. and Order at 12-13 (footnote omitted).

STANDARDS

The disposition of motions for reconsideration is within the discretion of the district court. *See Bliesner v. Commc'n Workers of Am.*, 464 F.3d 910, 915 (9th Cir. 2006).

"Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004). *See also* Fed. R. Civ. P. 60(b).

DISCUSSION

The State contends an intervening change in controlling Oregon law compels this Court to reconsider its decision in its Opinion and Order issued on February 8, 2008, in light of *Man Aktiengesellschaft v. Daimlerchrysler AG*, 218 Or. App. 117 (2008), in which the Oregon Court of Appeals overturned the trial court's decision to deny the State of Oregon's motion to intervene in the underlying litigation. In *Man Aktiengesellschaft*, the trial court entered a judgment against the defendants for \$350 million in punitive damages. *Id.* at 120. Amid post-judgment motions by the defendants challenging, *inter alia*, the sufficiency of the evidence to support the punitive-damages award, the parties settled the matter and moved the trial court to issue a supplemental judgment that would memorialize the settlement and eliminate the punitive-damages award. *Id.* at 120-21. The trial court permitted the State to submit formal, written objections contending the parties could not eliminate the State's share of the judgment under § 31.735, but the court denied the State's motion to intervene. *Id.* at 121. The trial court subsequently entered a supplemental judgment memorializing the parties' settlement, and the State appealed. *Id.* at 121-22.

The question before the Oregon Court of Appeals was whether the State should have been permitted to intervene, and the court analyzed Oregon Revised Statute § 31.735 to determine whether the

State had standing to challenge the parties' proposed settlement and dismissal. *Id.* Based on its analysis of the statute and its legislative history, the court held the State had standing to "assert its rights under O.R.S. 31.735." *Id.* at 120, 127-30. In *dicta*, the appeals court stated:

[T]he state's interest arose at the very end of the trial, when the court entered the jury's verdict. Beginning at that time, it had a vested right to 60 percent of the jury's award of punitive damages, subject to any legal challenges to that award. It was not necessary for the state to become a full party to the case in order to protect that right; its status as a judgment creditor, which gives it the ability to enforce the judgment, is sufficient protection.

Id. at 130.

On this basis, the State requests this Court to relieve it from the Judgment entered February 8, 2008. The State argues the Court is bound to follow the holdings of the Oregon Court of Appeals as well as its "considered *dicta*." See *Rocky Mountain Fire and Cas. Co. v. Dairyland Ins.*, 452 F.2d 603, 603-04 (9th Cir. 1971). A court may disregard the decision of an intermediate court of appeal only if there is "convincing evidence that the state's supreme court likely would not follow it." See *Ryman v. Sears, Roebuck and Co.*, 505 F.3d 993, 994 (9th Cir. 2007). See also *Andrade v. City of Phoenix*, 692 F.2d 557, 559 (9th Cir. 1982).

Plaintiff and Defendant, however, contend the Oregon Court

of Appeals *dicta* does not constitute a change in the law applicable to this case because *Man Aktiengesellschaft* is distinguishable on three bases: The trial court had entered a judgment before it denied the State's motion to intervene; the court of appeals addressed only the question whether the State had standing to challenge the judgment; and the court of appeals did not expressly address the nature of the State's interest before the entry of the judgment that included a punitive-damages award.

1. "Considered *Dicta*" of the Oregon Court of Appeals.

As noted, the question before the court of appeals in *Man Aktiengesellschaft* was whether the State had a sufficient interest in the punitive-damages award to confer standing on the State to object to the supplemental judgment memorializing the parties' settlement agreement, which eliminated the punitive damages without the State's involvement. 218 Or. App. at 121-22. Of particular importance, the trial court in *Man Aktiengesellschaft* initially entered a judgment that included an award of punitive damages totaling \$350 million. The court of appeals reviewed the legislative history of the statute and concluded the Oregon Legislature had, at least implicitly, intended to confer standing on the State to enforce its rights under § 31.735. *Id.* at 124-28.

Because the question before the court of appeals was

limited to whether the State had standing to challenge, the court did not specifically address the nature of the interest conferred on the State by § 31.735. In its assessment of the Oregon Legislature's intent, the court noted "[i]t is not entirely clear what it means for the state to be a 'judgment creditor' before the entry of a judgment, but it is certain that the legislature intended the state to have a vested interest in an award of punitive damages immediately upon the entry of a verdict." *Id.* at 127. Thus, despite the court's single description of the State's right as "vested" at the entry of a verdict that includes a punitive-damages award, this Court concludes the court of appeals's *dicta* on which the State relies in this case is not the type of "considered *dicta*" that constitutes a change in controlling law sufficient to compel the Court to alter its assessment of the nature of the State's interest before the entry of a judgment that includes a punitive-damages award.

2. "Convincing Evidence" of the Oregon Supreme Court's Potential Ruling.

Even if the court of appeals' interpretation of § 31.735 regarding the State's interest in a punitive-damages award were controlling, this Court is not bound by the court of appeals decision if there is convincing evidence that the highest state court would rule otherwise. *See Ryman*, 505 F.3d at 994. As this Court noted in its February 8, 2008, Opinion and Order, the Oregon Supreme Court in *DeMendoza v. Huffman* upheld former

§ 31.735 against numerous constitutional challenges by Plaintiffs who asserted the statute mandated an unconstitutional taking of property without just compensation. 334 Or. 425, 448-53 (2002). In upholding the statute, however, the *DeMendoza* court concluded a plaintiff's interest in a punitive-damage award "cannot" vest before the entry of a judgment containing such an award because of the uncertain nature of punitive-damages awards at that stage of the proceedings. *Id.* at 449. The court based its opinion on long-standing case law and held a plaintiff, until the entry of judgment, has "at most, an *expectation* of such an award," which does not constitute a legally protectable property right. *Id.* (emphasis added). Neither the *DeMendoza* nor the *Man Aktiengesellschaft* courts distinguished the State's interest in a punitive-damages award from that of a plaintiff nor held it to be superior.

Thus, on the basis of the Oregon Supreme Court's analysis in *DeMendoza* and consistent with this Court's Opinion and Order of February 8, 2008, the Court finds there is convincing evidence that the Oregon Supreme Court would conclude the State's interest in a punitive-damages award under § 31.735 as it is presently written cannot vest until the entry of a judgment. Thus, the Court adheres to its February 8, 2008, Opinion and Order.

CONCLUSION

For these reasons, the Court **GRANTS** Intervenor State of Oregon's Motion to the extent that the State requests the Court to reconsider its decision in its February 8, 2008, Opinion and Order, and, having reconsidered the merits of the State's arguments, the Court, in the exercise of its discretion, **DENIES** the State's Motion for Relief from Judgment of Dismissal (#114).

IT IS SO ORDERED.

DATED this 15th day of April, 2008.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge